



## CEQA Guidelines

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**Originating Committee:** Land Use Committee

**Date:** February 11, 2014

**Position:** Valley Industry and Commerce Association (VICA) supports the following changes to the CEQA Guidelines.

**Background:** The CEQA Guidelines are administrative regulations governing implementation of the California Environmental Quality Act (CEQA). The guidelines explain how to determine whether an activity is subject to environmental review, what steps are involved in the environmental review process, and the required content of environmental documents.

Public Resources Code Section 21083 requires the Office of Planning and Research (OPR) and the Natural Resources Agency (NRA) to periodically update the guidelines. The most recent amendments to the guidelines were adopted by the Natural Resources Agency on Dec. 30, 2009, and dealt specifically with greenhouse gas emissions.

This year, the OPR and NRA are undertaking a comprehensive review of the CEQA Guidelines.

As part of the update process, the state is seeking suggestions for improvements to the CEQA Guidelines that accomplish the following goals:

- Make the environmental review process more efficient and meaningful
- Reflect California's adopted policy priorities, including addressing climate change, promoting infill development, and conserving natural and fiscal resources
- Reflect statutory changes to CEQA and cases interpreting CEQA

During 2013, the state solicited initial input from stakeholders. A limited group of organizations, public agencies and individuals submitted suggestions for changes to the guidelines.

Based on these responses, the OPR released a list of possible topics that the OPR and NRA interpret as consistent with CEQA and related case law. The state is now seeking input on these topics, as well as the submission of additional changes to the guidelines.

**Business Nexus:** All development is subject to CEQA.

**Impacted Entities:** Developers, business owners, residents, local planning agencies, cities, counties

**Discussion:** The proposed topics include several important clarifications that will ensure more consistent implementation of CEQA. However, other changes have the potential to complicate the environmental review process and create cumbersome roadblocks for future development.

**1. Section 15063 (Initial Study) / Section 15083 (Early Public Consultation) – Sharing of Environmental Documents with Applicants**

*Proposed Change (Section 15063):* Clarify that initial studies may be prepared by contract to the lead agency. Also clarify that the lead agency may share an administrative draft of the initial study with the applicant in order to ensure accuracy in the project description and mitigation measures.

*Proposed Change (Section 15083):* Clarify that the lead agency may share an administrative draft of the EIR, or portions thereof, with the applicant in order to ensure accuracy in the project description and mitigation measures.

*VICA Position:* Support. Lead agencies should share CEQA documents with applicants throughout the environmental review process. When applicants are not consulted, inaccuracies can occur throughout documents. As such, we strongly encourage the use of “shall,” rather than “may.”

**2. Section 15064 (Determining the Significance of the Environmental Effects Caused by a Project)**

*Proposed Change:* Add a definition of regulatory standard, and explain when a standard may be used appropriately in determining the significance of an impact under CEQA.

*VICA Position:* Support. “Regulatory standard” is among the many undefined and under-defined terms used throughout the guidelines. This amendment should go further by providing an exemption for impacts that met regulatory standards. CEQA has evolved to such a degree that most significant impacts are governed by their own bodies of laws and regulations – sometimes at both the state and local level. If a project meets these standards, it should not be subject to repetitious, inconsistent scrutiny.

**3. Section 15064.4 (Determining the Significance of Impacts from Greenhouse Gas Emissions)**

*Proposed Change:* Further clarify that “business as usual” (or hypothetical baseline) analysis is not appropriate. Also clarify that, particularly for long-range plans, lack of complete precision in projections of emissions will not make the use of models inadequate for information disclosure purposes.

*VICA Position:* Oppose. The South Coast Air Quality Management District has not developed a long-range plan with baselines. As such, “business as usual” is the only standard that can be used in Southern California and is appropriately based on thresholds set by cities and counties through their General Plans. The only relevant long-range plan in existence is the Plan Bay Area, which is currently being challenged by several groups as inconsistent with CEQA and SB 375.

**4. Section 15082 (Notice of Preparation) / Section 15087 (Public Review of Draft EIR) – Additional Paper**

*Proposed Change (Section 15082):* Clarify that NOPs must be posted at the County Clerk’s office.

*Proposed Change (Section 15087):* Revise to require that all documents “incorporated by reference” into the environmental impact report be made available for public inspection, but not necessarily every document cited in the EIR.

*VICA Position:* Oppose. These requirements needlessly increase paper waste and will lead to frivolous lawsuits based on improper disclosure unrelated to the content of environmental documents. The current practice of online posting is sufficient and saves paper – an environmental benefit itself.

## **5. Section 15107 (Completion of a Negative Declaration)**

*Proposed Change:* Provide that a lead agency may request an extension of time under the Permit Streamlining Act to be consistent with Section 15108 (requirement for an EIR to be completed and certified within one year from the date when the application is received as complete).

*VICA Position:* Oppose. This change will have no practical impact on the review process. Lead agencies regularly avoid the Permit Streamlining Act's (PSA) timeline restrictions by refusing to deem an application as "complete" until it certifies the EIR. The state should focus on strengthening the PSA, so that Section 15108 is enforceable.

## **6. Section 15124 (Project Description)**

*Proposed Change:* In the description of the project's technical, economic, and environmental characteristics, allow the lead agency to discuss the project's benefits.

*VICA Position:* Oppose. Environmental analysis must be objective. Applicants already have sufficient approaches to communicate project benefits. This change will result in frivolous litigation resulting from disagreements over what constitutes a benefit.

## **7. Section 15155 (City or County Consultation with Water Agencies)**

*Proposed Change:* Provide further guidance on the adequacy of water supply analysis under CEQA. Also account for increasing variability in water supply.

*VICA Position:* Oppose, unless amended. "Adequacy" of water supplies is based on determinations by regional water agencies. It is inappropriate for the state to set thresholds for "adequate" water supply, when each region faces different local conditions, policies and practices. However, this section should be revised to ensure applicants can rely on water agency determinations of water supply adequacy.

## **8. Section 15357 (Discretionary Project)**

*Proposed Change:* Augment the definition of a "discretionary project" to provide further guidance about whether a project is ministerial or discretionary.

*VICA Position:* Support, if amended. Since the passage of CEQA, the definition of "discretionary project" has expanded to such a point that only a handful of project types are deemed ministerial. This definition should be narrowed to include only projects that do not conform to local plans.

## **9. Section 15378 (Project)**

*Proposed Change:* Revise the definition of "project" to more clearly address pre-approval agreements.

*VICA Position:* Support. Pre-approval agreements help to ensure appropriate projects are approved and reduce the time and cost associated with the CEQA process.

## **10. Appendix G: Environmental Study Checklist**

*Proposed Change:* Add a question about conversion of open space generally, and then give examples (agriculture, forestry, habitat connectivity, etc.) of possible impacts.

*Proposed Change:* Add a question about the cumulative loss of agricultural land.

*Proposed Change:* Add fire hazard questions.

*Proposed Change:* Add a question about providing excess parking.

*Proposed Change:* Revise the section on utilities to be clearer and remove redundancy, and add questions related to energy infrastructure.

*VICA Position:* Oppose. The Environmental Study Checklist does not need to be expanded any further. Lead agencies already add questions to fit local planning standards and the unique parameters of each project. The proposed changes pursue particular policy agendas of certain special interest groups and should be subject to full legislative scrutiny.

*Proposed Change:* Remove question (c) under land use and planning because it is already covered question (f) under the section on biological resources.

*VICA Position:* Support. This question regarding project conflicts with conservation plans is redundant.

## **11. Appendix J (Examples of Tiering)**

*Proposed Change:* Revise to provide better guidance on use of different and new streamlining tools.

*VICA Position:* Support. Tiering and other streamlining tools reduce the time and money spent on unnecessary, duplicative review of projects that fit within local plans.

## **12. New Appendixes (Mitigation Monitoring and Reporting Program & Supplemental Review Checklist)**

*Proposed Change:* Provide a sample Mitigation Monitoring and Reporting Program.

*Proposed Change:* Provide a checklist to guide supplemental review, including guidance on fair argument.

*VICA Position:* Oppose. These additional appendixes interfere with local decisions and create the potential for frivolous legislation due to inconsistencies between established local practices and these new requirements.

## **13. Cross-references – Section 15064 (Determining the Significance of the Environmental Effects Caused by a Project) / Section 15107 (Completion of a Negative Declaration)/ Section 15182 (Projects Pursuant to a Specific Plan)**

*Proposed Change (Section 15064):* Add explanation of baseline to this section, since Section 15125 technically addresses the contents of an environmental impact report. (Section 15125 states “an EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.”)

*Proposed Change (Section 15107):* Provide that a lead agency may request an extension of time under the Permit Streamlining Act to be consistent with Section 15108 (requirement for an EIR to be completed and certified within one year from the date when the application is received as complete).

*Proposed Change (Section 15182):* Add description of new specific plan exemption from Section 21155.4 (Exemption for resident/employment center or mixed-use development project within a transit priority area consistent with a sustainable communities strategy or alternative planning strategy)

*VICA Position:* Oppose. Inserting language from other sections creates the potential for inconsistencies between sections resulting from future legislation. References should be added to these sections, but no additional language needs to be inserted.

**14. Unnecessary Additions** – Section 15064 (Determining the Significance of the Environmental Effects Caused by a Project) / Section 15065 (Mandatory Findings of Significance) / Section 15088 (Evaluation of and Response to Comments) / Section 15125 (Environmental Setting) / Section 15126.4 (Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects) / Section 15126.4 (Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects) / Section 15168 (Program EIR) / Section 15222 (Preparation of Joint Documents)

*Proposed Change (Section 15064):* Add loss of open space as an example of potential cumulative impacts.

*Proposed Change (Section 15065):* Add roadway widening and the provision of excess parking as examples of projects that may achieve short-term environmental goals (congestion relief) to the disadvantage of long-term environmental goals (reducing greenhouse gas emissions).

*Proposed Change (Section 15088):* Clarify that responses may correspond to the level of detail contained in the comment, and specifically that responses to general comments may be general. Provide further that comments that do not explain the basis for the comments or the relevance of evidence submitted with the comment do not require a response. This change is consistent with *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal. App. 4th 515; *Gilroy Citizens for Responsible Planning v. City of Gilroy*, 140 Cal. App. 4th 911.

*Proposed Change (Section 15125):* Provide that the description of the environmental setting may include a description of the community within which the project is proposed in order to better analyze the specific impacts to that community.

*Proposed Change (Section 15125):* Clarify the analysis of consistency with adopted plans, both local and regional.

*Proposed Change (Section 15126.4):* Provide guidance on when an agency may appropriately defer mitigation details.

*Proposed Change (Section 15126.4):* Provide additional guidance on mitigation of energy impacts.

*Proposed Change (Section 15168):* Provide further guidance on determining whether a later project is “within the scope” of a program EIR.

*Proposed Change (Section 15222):* Clarify that CEQA lead agencies may enter into a memorandum of understanding to facilitate joint review with a federal lead agency.

*VICA Position:* Oppose. The texts of these sections are already clear. Amendments are likely to create redundancies, misinterpret case law and/or violate established industry practices.

**15. Legislative Clarification Needed** – Section 15091 (Findings) / Section 15125 (Environmental Setting) / Section 15126.4 (Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects) / Section 15126.6 (Consideration and Discussion of Alternatives to the Proposed Project)

*Proposed Change (Section 15091):* Clarify requirements regarding the need for findings on alternatives, as well as the difference between feasibility for the purpose of analysis in the environmental impact report versus actual feasibility for the purpose of making findings.

*Proposed Change (Section 15125):* Provide guidance on appropriateness of use of alternative baselines, including changes resulting from climate change, future baselines to address large-scale infrastructure, historic use, and unpermitted uses.

*Proposed Change (Section 15126.4):* Provide guidance on when an agency may appropriately defer mitigation details.

*Proposed Change (Section 15126.4):* Discuss mitigation banking.

*Proposed Change (Section 15126.6):* Provide guidance on the feasibility of alternatives.

*VICA Position:* Neutral. Alternative feasibility, alternative baselines and mitigation measure analysis are major areas of debate. These issues deserve further study through legislation, rather than this administrative process.

**Supporters:** No official supporters, as of 2/11/14

**Opponents:** No official opponents, as of 2/11/14

**Process History:**

Brought to the Land Use Committee on February 11, 2014:

\_\_\_\_ Pass \_\_\_\_ Fail \_\_\_\_ Tabled \_\_\_\_ Amended  
Vote:

Brought to the Board of Directors on March 27, 2014:

\_\_\_\_ Pass \_\_\_\_ Fail \_\_\_\_ Tabled \_\_\_\_ Amended  
Vote: